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No. 1296. September Term, 1877.

In the Court of Common Pleas, No. 1,
OF PHILADELPHIA COUNTY.

18

SITTING IN EQUITY.

Between

Henry J. Williams, Executor and Trustee of the
Will of James Rush, M. D.,

COMPLAINANT,

and

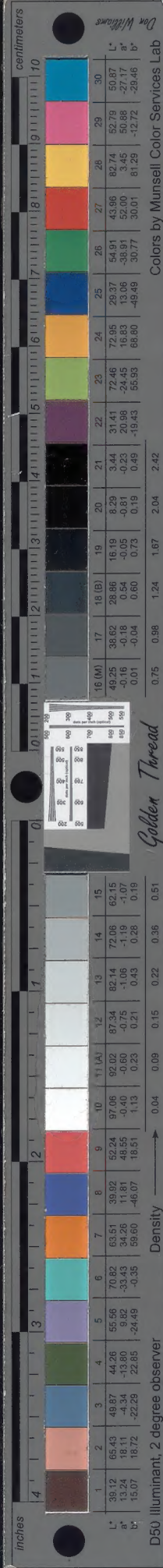
The Library Company of Philadelphia and others,

DEFENDANTS

MASTER'S REPORT AND FINAL DECREE.

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In the Court of Common Pleas, No. 1,
for the County of Philadelphia.

IN EQUITY.

Henry J. Williams, Esq., Exec-
utor and Trustee of the Will of
James Rush, M. D.,

vs.

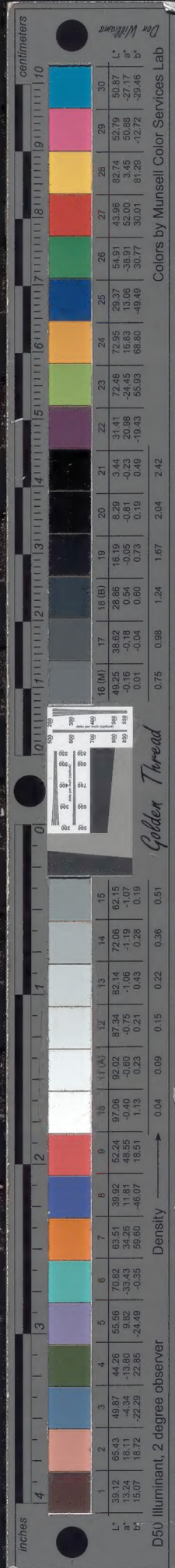
The Library Company of Phila-
delphia et al.

September Term, 1877.

No. 1296.

TO THE HONORABLE THE JUDGES OF THE COURT OF
COMMON PLEAS, No. 1.

In pursuance of his appointment, the Master held meetings in this case on March 13th, 20th and 29th, 1878, at his office, No. 230 South Fourth street, in the city of Philadelphia, and was attended by John G. Johnson and George Junkin, Esqs., for the plaintiff, and William Henry Rawle and R. C. McMurtrie, Esqs., for the Library Company of Philadelphia,—the other defendants not attending or being represented.



The bill (filed November 22d, 1877) seeks substantially and ultimately for a decree as to the duty incumbent upon the plaintiff as trustee of the will of Dr. James Rush.

The plaintiff states that Dr. Rush, domiciled at Philadelphia, died in the month of May, 1869, seized and possessed of a large estate, and having left a last will and codicils thereto. The will is dated February 26th, 1860; the first codicil, May 16th, 1866; the second codicil, April 18th, 1867; and the third codicil, April 12th, 1869; all of which were duly admitted to probate by the register of this county on May 31st, 1869, and letters testamentary granted to him, the plaintiff, and he thereupon entered upon the discharge of his duties as executor.

2. He sets out the material parts of the will and codicils, as, with some immaterial exceptions, they are recited in the draft of deed hereto annexed, wherein and whereby the testator gave, devised and bequeathed the whole of his estate to the plaintiff, in trust, *inter alia*, after securing and providing for the payment of certain legacies and annuities, to expend the whole of the remainder thereof in the purchase of a lot, to be selected by him, and the erection thereon of a fire-proof building, with book-cases, &c., sufficiently large to accommodate and contain not only all the present books of the Library Company defendant, but also their probable increase for many years to come, and upon the completion thereof to convey the same, with the lot of ground whereon it is erected, unto the said Library Company, for the uses and purposes of its library and for no other uses and purposes whatever: *Provided, however*, That prior to such conveyance the said Library Company should, by an alteration in its charter, or in some other way satisfactory to his executor, bind itself and its successors to comply with certain conditions:—

First.—As to not allowing any lectures, public orations

and addresses or exhibitions, or the formation of any museum, cabinet, gallery, or collection of natural history, statuary, sculpture, portraits or paintings, on the said lot of ground or in the said building; or use, apply or expend any funds derived under his will and codicils in procuring or defraying the expenses of any such, and—

Second.—As to keeping the accounts of the receipts and expenditures of these funds separate and distinct from all other accounts of the said Library Company, under accounts to be headed “The Ridgway Branch of the Library Company of Philadelphia.”

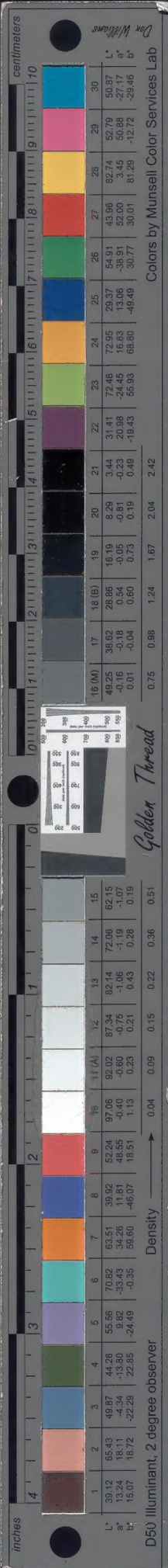
And that there should be inserted in the act of Assembly, which would be required to carry out the provisions of his will and codicils, clauses enacting—

“*First.*—That not more than one-fourth of the directors of the library shall belong to any one of the three learned professions of law, theology or medicine. This clause is, however, not intended to exclude any of the present members from re-election.

“*Second.*—That the number of shares in the library shall be limited to those actually issued at the time of my death. But the managers, by their by-laws, shall have the authority to allow any respectable person, depositing an amount and paying an annual sum, to be fixed by the Board of Managers, to have the full and free use of the library, as completely as if they were shareholders.

“*Third.*—That the library shall not connect themselves with any other body, corporate or politic; my residuary estate will form a large fund for the use of the library, and I wish them to be free from every inducement to go beyond what I consider the legitimate objects of a library company.”

3. The plaintiff selected a lot, bounded by Broad, Carpenter, Christian and Thirteenth streets, in said city, and erected thereon a building, in accordance with the directions



of the will and codicils, and on June 4th, 1877, notified the Library Company that the same was ready for its acceptance, and that his account as executor and trustee was about to be filed. He afterwards filed his account, which was confirmed by the Orphans' Court, and the balance thereof adjudicated to be in his hands, and the real estate unsold he states his readiness to transfer and convey to whosoever is entitled thereto under the said will.

4. He names the annuitants still living, and states that the residue of the estate still unconverted and undisposed of consists, substantially, of realty only, and that it yields a net income much in excess of the aggregate of the annuities, the payment of which would be secured by a conveyance to the person or corporation entitled thereto, if made subject to said annuities.

5. He is ignorant whether or not the said Library Company is willing to accept the bequests and devises in its favor upon the conditions imposed by the will, or, if willing, whether or not it has complied with all the preliminary conditions requisite to entitle it to receive a conveyance of said lot and building and of said unexpended residuary estate.

6. And until these matters are finally determined, the said building must remain unoccupied, to its great detriment, and the further discharge by the plaintiff of his duty as executor will be rendered impossible.

He therefore needs equitable relief, as follows:—

I. A decree that the annuities will be sufficiently secured and provided for by a conveyance to the person or corporation entitled thereto, subject to their payment, of the tes-

tator's unexpended estate; and that he shall make such assignment and conveyance so subject.

II. Discovery by the said Library Company as to whether or not it is willing to accept the devises and bequests in its favor upon the conditions imposed by the will.

III. Discovery by the said company, if so willing, as to what it has done to entitle it to a transfer of said lot and building and unexpended residuary estate.

IV. A decree determining whether said company has or has not accepted said devises and bequests; and, if it be decreed that it has so accepted, further discovery whether or not it has complied with all the preliminary conditions requisite to entitle it to receive such transfer.

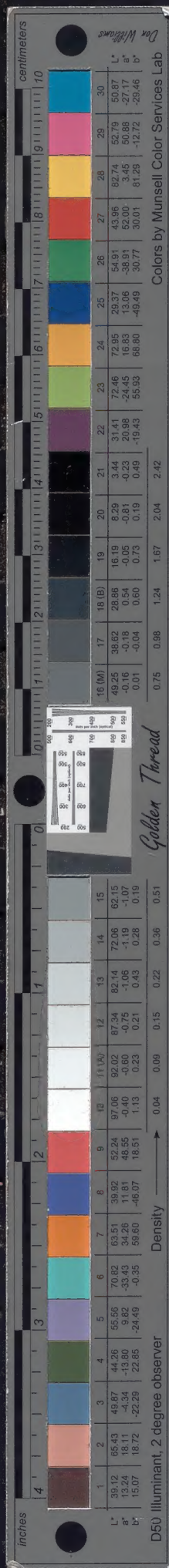
V. A decree determining whether or not said company is entitled to such transfer and conveyance; and, if it be decreed to be thus entitled, further determining in what manner and upon what terms and conditions such transfer shall be made.

VI. And in case it should be decreed that said company has refused to accept, or has failed to qualify itself so to accept, that the duty incumbent upon the plaintiff shall be decreed.

VII. General relief.

The Answer of the Library Company was filed December 31st, 1877, and therein, in paragraphs I., II., III. and IV., thereof, it admits, or states its belief, that the facts set forth in the first four paragraphs of the bill are correctly stated.

V. As to so much of the bill as sets forth that the plaintiff is ignorant whether it is willing to accept the bequests and devises in its favor, or, if willing, whether it has complied with all the preliminary conditions requisite to entitle



it to a conveyance of the lot and building, and of the unexpended residuary estate, it answers :—

1. At a duly convened meeting of its members on October 20th, 1869, it was duly "*Resolved*, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will."

Part of these terms was that it should, either by an alteration in its charter or in some other way satisfactory to the executor, bind itself to conform to and comply with certain express conditions, and it was advised by counsel that the right of the legislature to directly amend its charter was doubtful, but that the purposes of the will might and would be more properly attained by an act authorizing it to accept the bequest, to act as trustee under the will, and afterwards, to apply to the courts for such amendments to its charter as might be necessary to this end.

2. Such an act was accordingly presented to the legislature, passed, and was finally approved on February 23d, 1870. (It is set out in full in the draft of deed hereto annexed.)

3. After the passage of this act, at a duly convened meeting of its members on May 25th, 1870, it was *Resolved*, *inter alia*, to accept the provisions of said act, and that the directors be requested to apply to the Court of Common Pleas of Philadelphia County for certain amendments to the charter.

4. In pursuance whereof a memorial was, on October 31st, 1870, presented to the said court, and on December 10th, 1870, it was decreed that the charter of said company be amended as follows :—

"1. The Library Company of Philadelphia shall hereafter be held and taken to possess all such powers and capacities as may be necessary to enable them to act as trustees under the will of the late Dr. James Rush, accord-

ing to the provisions of an act of the General Assembly of the Commonwealth, approved on the twenty-third day of February, one thousand eight hundred and seventy (1870), entitled 'An act relative to the Ridgway Branch of the Philadelphia Library.'"

"2. So long as the Library Company shall act as such trustees, they shall do so under the following limitations and conditions:—

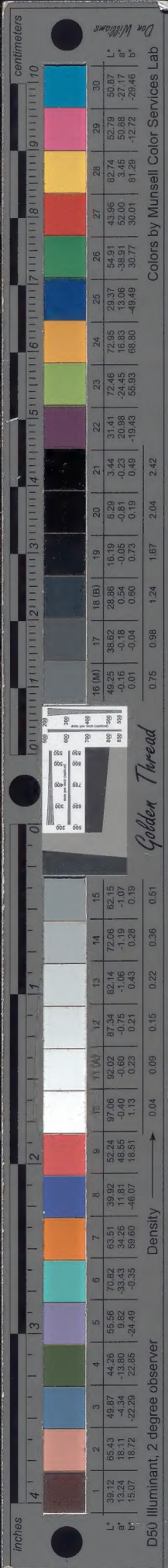
"*First.*—Not more than one-fourth of the directors of the Library shall belong to any one of the learned professions of law, theology, or medicine, but this shall not operate so as to exclude from re-election any of those who were members at the time of the death of the said Dr. James Rush.

"*Second.*—The number of shares in the Library shall be limited to those actually issued at the time of the death of Dr. Rush, but the managers by their by-laws shall have the authority to allow any respectable persons depositing an amount and paying an annual sum to be fixed by the board of managers, to have the full and free use of the Library as completely as if they were shareholders.

"*Third.*—The Library shall not connect themselves with any other body, corporate or politic."

And that said amendments be recorded in the office for recording of deeds in and for said county, and the same, together with the memorial and the order of court, were, on March 30th, 1871, accordingly recorded in said office, in Miscellaneous-book J. A. H., No. 1, page 145, &c.

VI. The Library Company's acceptance has never been revoked or withdrawn. And it is its intention to carry out in good faith the provisions of the will and of said act of the legislature, and to remove to said building the great bulk of its collection of books, especially those most valuable to the student, and most appropriate for the purposes designated by the testator as those of a public library,—



while, at the same time, it is advised that it is not necessary to the validity of its acceptance that it should remove thither all its books of every description, but that that class thereof which may be called current and ephemeral literature, and which the testator intended should be excluded from the branch library, may be retained in its present building, or some other topographically convenient to the largest number of those who use the same.

VII. Since its acceptance, a question has arisen as to whether the said new building, with its lot, when occupied by the Library Company, would be liable to taxation, in which case it might be its duty to decline to accept the bequest, as the income of the corporation from the devised estate and all other sources would, after payment of taxes, be wholly insufficient to maintain the institution. To obtain a judicial determination of this question, a bill was filed in the Court of Common Pleas, No. 2, and such proceedings were had, that on December 22d, 1877, it was decided, in effect, that the Library Company being an institution of learning, benevolence and charity, its property used by it as such was not liable to taxation. If this decree should be affirmed, it was advised that its acceptance would hold good, and it would be entitled to receive the conveyance hereinbefore mentioned; but if the decree should be reversed, then it was advised that the question of reconsidering its acceptance should be submitted to its members for such further action as they may take in the premises.

The history of the case will be sufficiently exhibited by adding a few facts to those set out in the bill and answer.

The decree of the Court of Common Pleas, No. 2, deciding, in effect, that the library and the building occupied by

the Library Company were exempt from taxation, was affirmed by the Supreme Court on March 4th, 1878.

The lot of ground selected by the executor and the building erected thereon have been paid for in full.

The unexpended estate consists of certain personal property particularly mentioned in the will, and certain other personal estate and certain real estate particularly mentioned and described in a schedule thereof hereto annexed, and marked Exhibit A.

The personal estate consists of shares of stock in certain corporations and cash in bank, and the real estate consists of lots with improvements thereon erected, and ground-rents issuing out of lots, all in the city of Philadelphia.

The said real estate, consisting of houses and lots, is now so rented as to yield a gross income of.....

\$28,534 00

From which, taking as a basis the year 1877, and deducting—

For repairs to and expenses for

the same..... \$3,852 92

For taxes..... 6,742 50

For salary to agent 400 00

10,995 42

Would leave net income..... \$17,538 58

Deducting total amount of annuities..... 5,680 00

There would remain..... \$11,858 58
or a surplus of income of eleven thousand eight hundred and fifty-eight dollars and fifty-eight cents from this source.

And from the ground-rents there would be an additional income of \$1177.60, making a surplus income of \$13,036.18. And the cash in the Pennsylvania Company for Insurances on Lives and Granting Annuities to the credit of the estate was, on April 23d, 1878, \$13,532.64, but since then may have been increased by deposits, or diminished by withdrawals.



MATTERS FOR INQUIRY BY THE MASTER AND HIS
REPORT THEREON.

The cause was referred to the Master to inquire and report:—

1. Whether the annuities bequeathed by the testator to the defendants, other than the Library Company, will be sufficiently secured or provided for by a conveyance of the unexpended estate of the testator, to the person or the corporation entitled thereto, subject to their payment.

2. Whether the Library Company aforesaid has or has not conformed to and complied with the conditions prescribed by the testator, under which it was to hold the devise and bequest, and if not, what other and further action should be taken by it in the premises.

3. Whether the complainant has or has not done and performed all things necessary to entitle him to call upon the said defendant to elect to accept or decline the said devise and bequest.

4. Whether the said defendant is in possession of such material facts touching the condition of the estate and its present and future liabilities, as ought to enable it so to elect; and if not, what are such material facts; and if there be a question whether or not such election has been already made or should now be compelled, that the Master report the circumstances upon which such question is raised, with his opinion thereon, and in what manner and form such election, if not already made, should be made accordingly.

5. Such other facts as may be material in the premises.

6. And in case he shall report that the said defendant is entitled to receive from the complainant a transfer and conveyance of the said residuary estate, he shall settle and report the form thereof, and the conditions and covenants in that behalf prescribed by the will of the testator.

7. In case he shall report that the said defendant is not entitled to receive from the complainant such transfer and conveyance of the said residuary estate, he shall report the form of such decree as shall be necessary to be made in the premises.

As to which, after inquiry, he reports:—

1. The net income of the estate is, and, so far as can be foreseen, will continue to be, largely in excess of the aggregate of the annuities, and, as under the will and codicils these annuities are to be first provided for, and the income must be first applied and appropriated to the payment thereof, the Master sees no reason to doubt, and therefore reports, that the annuities bequeathed by the testator to the other defendants will be sufficiently secured and provided for by a conveyance of the unexpended estate to said Library Company (herein held to be entitled), subject to their payment.

2. Two questions were raised under this second head of inquiry:—

First.—As to the conditions to and with which the Library Company must comply and conform; and,

Second.—Whether the Library Company should bind itself to make the new building the storehouse for all of its books.

As to the first of these questions; it seems to the Master that the company, by the act of the legislature, passed at its instance, and by the amendments to its charter granted by the court, has done everything required to be done in this way as a prerequisite to entitle it to a conveyance. The other matters mentioned as conditions, to the performance of which it was to bind itself, viz., as to lectures, public orations, or oral addresses, or exhibitions, museum, cabinet, gallery or collection of natural history, statuary,



sculpture, portraits or paintings, and the keeping of separate accounts, it was not absolutely required to bind itself by an alteration in its charter, but by this method "or in some other way satisfactory to my executor," and it is understood that the executor does not insist upon an amendment of the charter in this respect, but will be satisfied if they shall be sufficiently provided for in the terms of the deed.

As to the second question; the Library Company, in its answer, sets out that it had been advised by counsel that it would not be necessary to the validity of its acceptance to remove to the new building all its books of every description, and it was intimated at the hearings that it was not the intention of the company to do so, unless required, at least for the present. It seems to the Master that it is not requisite that the company should do this now or ever. While the testator directs his executor to erect such a building as would accommodate and contain all the books of the company, and the probable increase thereof for many years to come, he does not make it a condition precedent, or a condition at all, that it should bind itself to remove thither all its present collections of books, or store there all the books it may own in the future; on the contrary, it is quite evident that there were certain kinds or classes of books which he preferred should not be stored in the new building, and in the purchase of which he did not wish the income of his estate to be expended. The testator had his own idea of what a public library should be; the sort of library by which he wished this building to be occupied, and to the maintenance of which he wished this income to be appointed, and he expressed it in the fifth paragraph of the first codicil, thus:—

"I do not wish that any work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subjects of science, government, theology, morals or medicine, provided it contains neither ribaldry nor indecency. Temper-

ate, sincere and intelligent inquiry and discussion are only to be dreaded by the advocates of error. The truth need not fear them, nor do I wish the Ridgeway branch of the Philadelphia Library to be encumbered with the ephemeral biographies, novels, and works of fiction or amusement, newspapers or periodicals, which form so large a part of the current literature of the day. The great object of a public library is to bring within the reach of the reader and student works which private collections do not, and cannot, contain, and which in no other way could be accessible to the public. Its excellence will depend—not upon the number of its volumes—but upon their intrinsic value, and I wish this principle to be carried out by the managers, who, I hope, will never be influenced by the too common ambition for mere numerical superiority.”

The trust would therefore be abundantly satisfied, and would be best performed in accordance with the wishes of the testator by removing to the new building the bulk of the Library Company's books, including, of course, those most valuable to the student and most appropriate for the purposes of a public library as designated by him, and excluding therefrom all books of that class of ephemeral or current literature with which he did not wish this building encumbered, and which, consequently, and all books of like character hereafter to be acquired by the Library Company, may well be retained and stored in its present building or such other as the managers may chose to use for this purpose.) The Master is therefore of opinion, and so reports, that the Library Company has conformed to and complied with the conditions prescribed by the testator under which it was to hold the said devise and bequest.

3. He further reports, that the plaintiff has done and performed all things necessary to entitle him to call upon the said defendant Library Company to elect to accept or decline the said devise and bequest.



4. He further reports that the said defendant Library Company is in possession of such material facts touching the condition of the estate and its present and future liabilities as ought to enable it so to elect, and that it has elected to accept the said devise and bequest.

A question was raised at the hearings whether or not the Library Company had so elected. These are the circumstances: On October 29th, 1869, at a duly convened meeting of the members (sometimes called shareholders or stockholders) of the company, it was "*Resolved*, That the stockholders of the Library Company of Philadelphia do hereby accept the legacy of Dr. James Rush according to the terms expressed in his will," and to enable the company to carry into effect this resolution, an act of Assembly was, at its instance, passed, and approved, February 23d, 1870, authorizing the company to act as trustee under the will and codicils, the provisions of which were accepted by the members of the company at a duly convened meeting therefor held on May 25th, 1870.

At this time, the Library and its building were, by two acts of the Legislature, passed in 1826 and 1839, exempted from taxation. By Article IX., section 1, of the Constitution of 1873, it was provided, *inter alia*, "the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity," and by "Section 2, all laws exempting property from taxation, other than the property above enumerated, shall be void."

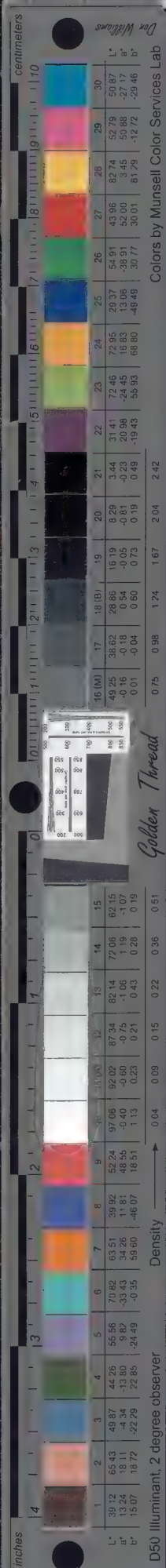
The General Assembly did, accordingly, by an act approved May 14th 1874 (P. L., 158), provide that, *inter alia*, all hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence or charity, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same, founded,

endowed and maintained by public or private charity, be exempted from all and every county, city, borough, bounty, road, school and poor tax.

Under and in pursuance of this act, the Board of Revision of Taxes of the city of Philadelphia marked on the books of the Board the building of the Library Company as exempt from taxation by reason of the Library Company being an institution of learning and charity within the true intent and meaning of the Constitution and said act of Assembly; but the Collector of Delinquent Taxes, pretending that the said act was unconstitutional and void, and threatening to proceed to the collection of a tax to be levied on the company's library and building, the Library Company filed a bill against him, praying for an injunction to restrain him from so doing; and on December 22d, 1877, the Court of Common Pleas, No. 2 (Mitchell, J., delivering the opinion), awarded the injunction, and this decree was, on March 4th, 1878, in a *per curiam* opinion, affirmed by the Supreme Court.

While these proceedings were pending, it was considered by the directors of the Library Company that in case it should be judicially determined that the new building, with its ground, was, when occupied by the company for its library, liable to taxation, it might be the company's duty to decline to accept the bequest, as its income from the devised estate and all other sources would, after the payment of taxes, be wholly insufficient to maintain the institution, and in that event they were advised that the question of reconsidering the company's acceptance should be submitted to its members for such further action as they might take in the premises.

Now, while it may be that when the stockholders' resolution of acceptance was passed, the company was not authorized to act as such trustees, and, even if it had been so authorized, it was not at that time bound to elect and could not have been compelled to elect, as the erection of the

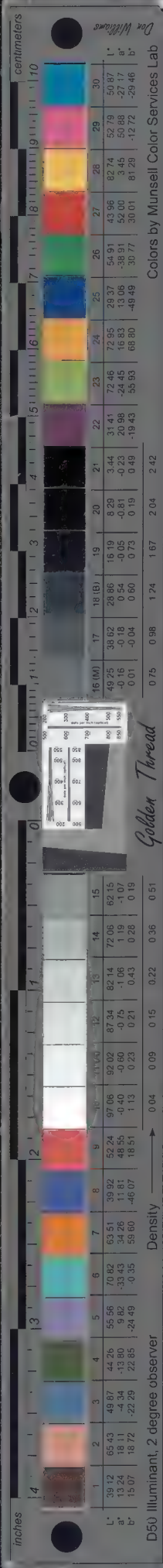


building did not depend upon such election, and the building was not then completed, or even, so far as appears, begun, still, if the stockholders, either under the belief that the company was so authorized, or in view of obtaining such authority, chose to elect and did so elect, the subsequent acceptance by them of the act of Assembly empowering them to act as trustees was, and could only have been meant to be, a re-affirmance of their election. The fact that the managers were advised that the question of reconsidering the acceptance should be submitted to the stockholders for further action, in the event of the happening of a contingency which would have turned into a burden what the testator had intended as a bounty, and which the company had accepted in the expectation of its being a benefit, cannot affect the finality of the election. The contingency did not happen, and the question is not what the directors considered might be their duty, or what they were advised might be their duty, but what the company by its stockholders did, and what they did is shown by their resolutions of acceptance of the legacy and of acceptance of the provisions of the act of Assembly, and it has not been made to appear that any of them have sought, or even so much as expressed a wish, to have their action in the premises in any way reconsidered, and therefore the Master is of opinion, and so reports, that the Library Company has duly elected to accept the said devise and bequest.

5. He further reports that, so far as he is advised, there are no material facts to be reported other than such as have already been stated and set out.

6. In the third codicil it is provided, *inter alia*, as follows :—" If the said Library Company shall in any respect violate or omit to comply with any of the provisions, conditions, or directions, regulations, or restrictions, therein [*i.e.*, in said will and codicils] contained, then I will and devise

that the Pennsylvania Company for Insurances on Lives and Granting Annuities shall and may [or, if they omit, neglect, or refuse to do so, any citizen of the city of Philadelphia) apply to the proper courts of this Commonwealth to compel the said Library Company to comply with the provisions of my said will and codicils, or to remove them from the said trusts, and transfer the whole real and personal estate aforesaid, including the library building, and all the books and furniture belonging to the Ridgway Branch of the Philadelphia Library, unto the said Pennsylvania Company for Insurances on Lives and Granting Annuities, or if they shall neglect or refuse to accept this trust, to some other trust company of the city of Philadelphia, who shall take and hold the whole of the said estates, real and personal, library building, books, and furniture aforesaid, in trust to collect and receive the whole income thereof, and apply the same to the uses, objects, and purposes of my said will and codicils thereof; permitting, however, if in their sole discretion they shall think proper so to do, but not otherwise, the said Philadelphia Library Company to occupy the library building, and to take charge of the books, &c., of the Ridgway Branch thereof; provided they shall do so under the absolute direction and control of the new trustees, who shall strictly supervise and entirely control and direct all the expenditures of my estate in relation thereunto; and who may, at any time, remove them from the said charge, if the Library Company shall not submit and conform to such control and direction." In view of these provisions, it seems to the Master that it would serve no useful purpose to discuss and undertake to determine now all the questions which might possibly arise in the practical administration of this trust under the will and codicils,—questions as to what were and were not conditions imposed, or positive directions commanded, or mere wishes expressed, by the testator; and it was deemed safer and better, and therefore more advisable, to recite in the deed all the parts of the will and codicils in any wise referring to, or



bearing upon, the trust in the Library Company, thus binding the company to the fullest performance of the whole trust, and leaving for future decision such questions, if any, as may hereafter arise in respect thereto. The Master is informed that all the annuitants have consented that the conveyance to the Library Company shall be made as herein reported, excepting one thereof who is absent from the city, and whose consent will be obtained; but as the conveyance is to be made subject to the payment of the annuities, the Master is of opinion that the consent of the annuitants is not technically necessary. A draft of conveyance in conformity with this opinion is accordingly annexed and marked Exhibit B.

7. As he has reported that the Library Company of Philadelphia is entitled to receive from the plaintiff a transfer and conveyance of the said residuary estate, there is nothing to be reported under this head of the matters as to which he was directed to inquire and report.

Respectfully submitted.

SAM'L ROBB,
Master.

May 1st, 1878.

It is agreed that notice of this report has been served, and the time for filing exceptions is waived—no objection existing on the part of the Library Company.

WM. HENRY RAWLE,
R. C. McMURTRIE,
For the Library Company.

JOHN G. JOHNSON,
GEO. JUNKIN,
Solicitors for Henry J. Williams, Executor, &c.

SCHEDULE

REFERRED TO IN THE FOREGOING REPORT MARKED

A.

All that certain lot of ground, on portions of which are erected the Library and other buildings, situate between Broad street, Thirteenth street, Christian street and Carpenter street, and containing in front on said Broad street two hundred and ninety-nine feet five inches.

All those eight certain contiguous lots of ground and messuages (Nos. 1200, 1202, 1204, 1206 and 1208 Callowhill street, and 330, 332 and 334 North Twelfth street), situate at the south-west corner of Callowhill and Twelfth streets; containing together on Callowhill street eighty-two feet and on Twelfth street of that width one hundred and forty feet to Carlton street.

All that certain lot of ground and three messuages (Nos. 415 South street and 4 and 6 Berlin street), situate at the north-west corner of South and Berlin streets, between Fourth and Fifth streets; containing in front on South street twenty feet and in depth on Berlin street ninety-two feet three inches, the said lot widening on the northernmost end thereof to about forty-three feet.

All those three certain contiguous lots of ground and messuages (Nos. 17, 19 and 21 Pennsylvania avenue), situate on the east side of Pennsylvania avenue, between Fifth and Sixth streets and Vine street and Mulberry alley, at the distance of one hundred and thirty-nine feet eight inches south of Vine street; containing together in front forty-five feet and in depth on south line thirty-one feet five inches to a point; thence extending north forty-one feet nine inches;



thence west five feet; thence north three feet three inches and thence west twenty-six feet five inches to Pennsylvania avenue aforesaid.

All those three certain contiguous lots of ground and messuages (Nos. 25, 27 and 29 Pennsylvania avenue), situate on the east side of the said Pennsylvania avenue, at the distance of seventy-nine feet eight inches south of Vine street; containing together in front forty-five feet and in depth on the south line thirty-one feet five inches to a point; thence extending north forty-one feet nine inches; thence west five feet; thence north three feet three inches and thence west twenty-six feet five inches to Pennsylvania avenue aforesaid.

All that certain lot of ground and seven messuages (Nos. 516 Vine street and 1, 2, 3, 4, 5 and 6 Clawges court), situate at the south-west corner of Vine street and Pennsylvania avenue aforesaid; containing in front on Vine street twenty-two feet and in depth on said Pennsylvania avenue three hundred and six feet to Mulberry alley, subject to a yearly ground-rent of forty-four dollars.

All that certain lot of ground and message (No. 62 North Front street), situate on the west side of Front street, at the distance of thirty-four feet two and one-half inches south of Arch street; containing in front on said Front street nineteen feet eight inches and in depth on the south line seventy-seven feet and on the north line seventy-eight feet five and one-quarter inches to a four feet two inches wide alley leading into Arch street, on which alley it contains nineteen feet six inches.

All that certain lot of ground and two messuages (Nos. 64 and 66 North Front street), situate at the south-west corner of Arch and Front streets; containing

in front on Front street thirty-four feet two and one-half inches and in depth on the said Arch street thirty-three feet three and one-half inches and on the south line thirty-two feet five and one-quarter inches, the rear end containing in breadth thirty-four feet.

All that certain lot of ground and messuage (Nos. 139 North Front street and 136 North Water street), situate on the east side of Front street, at the distance of two hundred and forty-five feet one inch southward from the south-east corner of Front and Race streets; containing in front on Front street eighteen feet nine and one-half inches and in depth forty-one feet to Water street.

All that certain lot of ground and messuage (Nos. 141 North Front street and 138 North Water street), situate on the east side of Front street, at the distance of two hundred and fourteen feet one inch southward from the south-east corner of Front and Race streets; containing in front on Front street thirty-one feet and in depth forty-one feet to Water street.

All that certain lot of ground and messuage (Nos. 239 North Front street and 240 North Water street), situate on the east side of Front street, at the distance of two hundred and forty-nine feet one inch southward from the south-east corner of Vine and Front streets; containing in front on Front street sixteen feet five inches and in depth forty-one feet to Water street, on which it contains sixteen feet six and one-half inches.

All that certain lot of ground and messuage (Nos. 241 North Front street and 242 North Water street), situate on the east side of Front street, at the distance of two hundred and thirty-two feet eight inches southward from the south-east corner of Vine and Front streets; containing



in front on Front street sixteen feet five inches and in depth forty-one feet to Water street, on which it contains sixteen feet six inches.

All that certain lot of ground and twelve messuages (Nos. 21, 23 and 25 North Second street and 1, 2, 3, 4, 5, 6, 7, 8 and 9 Jenkins place), situate on the east side of Second street, at the distance of thirty feet north of Church street, formerly called Jones alley; containing in front on Second street forty feet ten and one-half inches and in depth two hundred and four feet, the width on the rear end being forty feet seven inches.

All that certain lot of ground and messuage (No. 10 South Second street), situate on the west side of Second street, at the distance of sixty-nine feet south of Market street; containing in front on Second street thirteen feet eight inches and in depth forty-four feet to a three feet wide alley.

All that certain lot of ground and messuage (Nos. 614 and 616 Market street), situate at the south-east corner of Market and Decatur streets; containing together in front on Market street thirty-eight feet three and one-half inches and in depth on Decatur street one hundred and eighteen feet.

All those two certain contiguous lots of ground and messuages (Nos. 443 and 445 Magnolia street), situate on the east side of Magnolia street, at the distance of seventy-seven feet ten inches south of Noble street; containing together in front on Magnolia street thirty feet and in depth forty-four feet eleven inches.

All that certain lot of ground and messuage (No. 139 New street), situate on the north side of New

street, at the distance of ninety feet one and one-fourth inches east of Second street; containing in front on New street seventeen feet and three-fourths of an inch and in depth on the east line fifty-one feet to a point; thence west seventeen feet and three-fourths of an inch; thence south four inches; thence in a westerly direction six feet; thence south seventeen feet seven and one-half inches; thence east five feet six inches, and thence south thirty-two feet four inches to New street aforesaid.

All that certain lot of ground and message (No. 133 North Eighth street), situate at the north-east corner of Cherry and Eighth streets; containing in front on Eighth street twenty-two feet five inches and in depth on Cherry street sixty feet one inch.

All those three certain contiguous lots of ground and messages (Nos. 148, 150 and 152 North Eighth street), situate on the west side of Eighth street and south side of McAllister's court, between Race and Cherry streets; containing together in front on Eighth street fifty-two feet and in depth eighty feet.

All that certain lot of ground and message (No. 259 North Ninth street), situate on the east side of Ninth street, at the distance of one hundred and eight feet south of Vine street; containing in front on Ninth street eighteen feet and in depth ninety-three feet to Schell street. Subject to a yearly ground-rent of \$100.

All that certain yearly ground-rent of \$840, payable on the first day of January and July in each year, by Elizabeth Woodhull Freeman *et al.*, their heirs and assigns, issuing out of a certain lot of ground, with the three-story brick message thereon erected, situate on the south side of Walnut street, between Eleventh and Twelfth streets, at



the distance of seventy feet six inches west of Quince street; containing in breadth on Walnut street twenty-three feet six inches and in depth one hundred and five feet.

All that certain yearly ground-rent of seventy-two dollars, payable on the first day of February and August in each year, by Peter McAnally, his heirs and assigns, issuing out of a certain lot of ground, situate on the north side of Carpenter street, beginning at a point thereon at the distance of one hundred and forty-four feet east of Tenth street; thence northward at right angles with said Carpenter street fifty-four feet one inch; thence further northward at right angles with Hall street fifty-four feet one inch to the south side of said Hall street; thence eastward along the same sixteen feet; thence southward at right angles with said Hall street fifty-five feet five inches; thence further southward at right angles with Carpenter street fifty-five feet five inches to the north side of Carpenter street, and thence westward along the same sixteen feet to the place of beginning.

All that certain yearly ground-rent of ninety-six dollars, payable on the first day of February and August in each year, by Joseph D. Greene, his heirs and assigns, issuing out of a certain lot of ground, situate on the north side of Carpenter street, beginning at a point thereon at the distance of one hundred and twenty-eight feet eastward from Tenth street; thence northward at right angles to Carpenter street fifty-two feet nine inches; thence further northward at right angles to Hall street fifty-two feet nine inches to the south side of said Hall street; thence eastward along the same sixteen feet; thence southward at right angles to said Hall street fifty-four feet one inch; thence further southward at right angles to Carpenter street fifty-four feet one inch to the north side of Car-

penter street; and thence westward along the same sixteen feet to the place of beginning.

All that certain irredeemable yearly ground-rent of thirty-six dollars, silver, payable on the first day of November, in each year, by William Franklin, his heirs and assigns, issuing out of a certain lot of ground situate on the west side of Seventh street, at the distance of one hundred and fifty feet south of Lombard street; containing in front on said Seventh street thirty-six feet, and in depth one hundred and two feet.

All that certain irredeemable yearly ground-rent of thirty dollars, silver, payable on the first day of May and November, in each year, by Thomas Ward, his heirs and assigns, issuing out of a certain lot of ground on the south side of Margaretta street, at the distance of two hundred and thirty feet east of Tenth street; containing in front on Margaretta street sixteen feet, and in depth sixty-four feet to Hall street.

All that certain irredeemable yearly ground-rent of thirty-two dollars, silver, payable on the first day of May and November, in each year, by Daniel McCloskey, his heirs and assigns, issuing out of a certain lot of ground situate on the south side of Margaretta street, at the distance of one hundred and fifty feet east of Tenth street; containing in front on Margaretta street sixteen feet, and in depth sixty-four feet to Hall street.

All that certain irredeemable yearly ground-rent of thirty dollars, silver, payable on the first day of May and November, in each year, by Patrick Mullen, his heirs and assigns, issuing out of a certain lot of ground, situate on the south side of Margaretta street, at the distance of one hundred and ninety-eight feet eastward from Tenth street;



containing in front on Margaretta street sixteen feet, and in depth sixty-four feet to Hall street.

All that certain irredeemable yearly ground-rent of nine dollars and sixty cents, payable on the first day of November, in each year, by James Hutton, his heirs and assigns, issuing out of a certain lot of ground situate on the north side of a sixteen feet wide alley leading from Seventh to Eighth street, between Lombard and South streets, at the distance of one hundred and two feet from Seventh street; containing in front on said alley eighteen feet, and in depth seventy-two feet.

All that certain irredeemable apportioned yearly ground-rent of thirty-two dollars, silver, payable on the first day of January and July, in each year, by William Dyer, his heirs and assigns, issuing out of a certain lot of ground situate on the west side of Eighth street, between Arch and Race streets, at the distance of fifty-two feet south of McAllister's court; containing in front on said Eighth street sixteen feet, and in depth eighty feet.

All of which said lots of ground are situate in the city of Philadelphia.

Three shares of the capital stock of the Harrisburg, Portsmouth and Mount Joy Railroad Company.

Fifty-two shares of the capital stock of the Chesapeake and Delaware Canal Company.

Eleven shares of the capital stock of the Union Mutual Insurance Company.

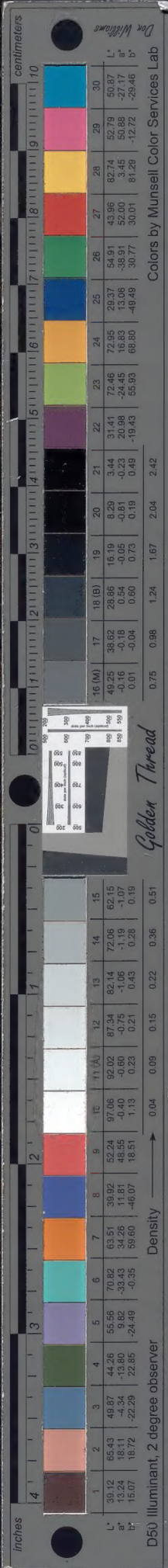
Six shares of the capital stock of the Philadelphia and Lancaster Turnpike Company.

Thirty-three shares of the capital stock of the Pennsylvania and Ohio Canal Company.

Nine shares of the capital stock of the Danville and Pottsville Railroad Company.

Twenty-one shares of the capital stock of the Pennsylvania Bank.

Cash on hand in the Pennsylvania Company for Insurances on Lives, &c.



In the Court of Common Pleas, No. 1, of
Philadelphia County.

IN EQUITY.

*Henry J. Williams, Executor and
Trustee of the Will of James
Rush, M. D., Complainant,*
and
*The Library Company of Phila-
delphia et al., Defendants.*

September Term,
1877.

No. 1296.

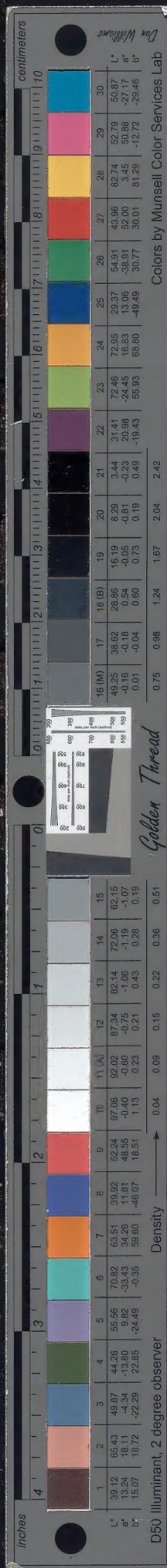
FINAL DECREE.

And now, this fourth day of May, A. D. 1878, this cause came on to be heard upon the pleadings and the report of the Master, to whom it was referred, to ascertain certain facts and to settle the form of a conveyance to be made by Henry J. Williams, executor of the will of James Rush, M. D., deceased, to The Library Company of Philadelphia, if they are entitled to the same, and no exception having been filed thereto by the parties to the proposed indenture reported by him, either to the form thereof or to the right of the said defendant, the said The Library Com-

pany of Philadelphia, as reported by the Master, to have the residuary estate of the said testator conveyed and assigned to it upon the terms and subject to and charged with the annuities therein recited:

It is ordered, adjudged and decreed that the said indenture be executed by the said Henry J. Williams, executor, and the said The Library Company of Philadelphia, respectively. And it is further ordered that the costs in the cause and the expenses of the said executor, connected with this litigation, be retained by him and paid out of the funds in his hands, and that the costs and expenses of the defendant, The Library Company of Philadelphia, in the cause, be paid out of any funds which may be received by it by virtue of this decree.

Per Curiam.



that of Philadelphia as reported by the Master, as being
the ordinary rate of the said master conveyed and
signed to it upon the terms and subject to and charged
with the amount therein recited;

It is ordered, advised and decreed that the said master
shall be required by the said Henry J. Williams, master
and the said The Liberty Company of Philadelphia, to
investigate and to ascertain the value of the goods in the
ship and the expenses of the said voyage, and to report
the findings, be required by him and paid out of the
funds in his hands and that the costs and expenses of the
testimony, The Liberty Company of Philadelphia, in the
case, be paid out of any funds which may be recovered by
it by virtue of this decree.

For Court.